HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

Writ Petition Nos.9950 and 14659 of 2005

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Writ Petition No.9950 of 2005

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Between:

Farhad Gew Irani and three others. ……Petitioners.

And

Government of Andhra Pradesh,
represented by its Secretary,
Municipal Administration and Urban
Development Department,
Secretariat, Hyderabad and others. ……Respondents.

Counsel for the petitioners: Sri D.Prakash Reddy,
Senior Advocate assisted by
Sri J. Venkateswara Reddy.

Counsel for respondent No.1: Government Pleader for
Municipal Administration.

Counsel for respondent No.2: Sri D.Nageswara Rao

Counsel for respondent No.3: Sri C.Narender

Writ Petition No.14659 of 2005

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Between:

Boddu Rajaiah and another.

…Petitioners.

And

Municipal Corporation, Warangal,
through its Commissioner in office,
Warangal and others.

…Respondents.

Counsel for the petitioners: Sri Bankatlal Mandhani

Counsel for respondent No.1: Sri K.Joe Ratan Raj,
Standing Counsel for
Warangal Municipal
Corporation.

Counsel for respondent Nos.2
to 4: Government Pleader for
Municipal Administration.

Counsel for respondent Nos.5
to 7: Sri D.Prakash Reddy, Senior
Advocate assisted by
Sri J.Venkateswara Reddy.

:: O R D E R ::

January 05, 2007

Per G.S. SINGHVI, C.J.

The above noted writ petitions are being disposed of by a common order because the issues raised therein are inter-related.

We shall first notice the facts, which have been culled out from the pleadings and documents of the parties. The same are as under:

1) Sri Kaikusroo, son of Shapurji Irani, resident of House No.1/17, Kazipet, Warangal District filed a declaration under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the 1976 Act') on 24-8-1976 declaring the following lands:

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Village	Survey Nos.	Extent in Ac.gts.	Extent in Hectares.
Kadipikonda	64, 70, 71, 72, 73	25.18	10,2992 or 1,02,992 Sq.mtrs.

2) After holding inquiry, Special Officer and Competent Authority, Urban Land Ceiling, Warangal (hereinafter described as 'the Special Officer') prepared a draft statement under Section 8 (4) of the 1976 Act. On 28-6-1985, the Special Officer issued final statement under Section 9, the relevant extracts of which read as under:

1. Details of lands allowed to be retained (3,671+329 Sq.mtrs.) of house at Kazipet.	4,000 Sq.mtrs.
2. Details of the lands proposed to be surrendered at Kadipikonda Village in Survey Nos.64, 70, 71, 72 and 73.	52,370 Sq.mtrs.

3) The declarant preferred an appeal against the final statement. Commissioner of Land Reforms and Urban Land Ceiling, Hyderabad-cum-Appellate Authority (hereinafter referred to as 'the Appellate Authority') admitted the appeal and stayed the order of the Special Officer. But, after hearing the representatives of the parties, the Appellate Authority vide its order dated 28-8-1986 dismissed the appeal.

4) The declarant and others challenged the order of the Appellate Authority in Writ Petition No.13547 of 1986, which was allowed by this Court on 20-9-1989 and the case was remanded to the Special Officer for fresh determination of the ceiling case. Thereafter, the Special Officer passed order dated 5-12-1990 under Section 8(4) of the 1976 Act and declared 83, 387 square meters of land as surplus. The appeal preferred against that order was allowed by the Appellate Authority on 17-12-1992 and a direction was given to the Special Officer to re-compute the holdings of Ms.Meharbanoo Shapurji Irani

and Ms.Shirinbai Shapurji Irani. The legal heirs of the declarant did not feel satisfied. They filed Writ Petition No.17291 of 1993, which was allowed by this Court and orders dated
5-12-1990 and 17-12-1992 were quashed with a direction to the Special Officer to pass fresh order.

5) In compliance of the Court's direction, the Special Officer passed order dated 16-1-1995 under Section 8(4) of the 1976 Act, whereby he declared that the land-holder had surplus land measuring 58,154 square meters.

6) On appeal, the Chief Commissioner of Land Administration stayed the proceedings beyond Section 10(3) of the 1976 Act. This did not satisfy the land owners, who filed Writ Petition No.1719 of 1995 questioning the fresh determination made by the Special Officer. The same was disposed of by this Court with a direction to the Appellate Authority to decide the appeal afresh. As a sequel to this, the Appellate Authority passed order dated 22-4-1995, whereby it dismissed the appeal preferred against order dated 16-1-1995.

7) The heirs of the declarant challenged the order of the Appellate Authority in Writ Petition No.9761 of 1995. They also filed WPMP.No.12090 of 1995 for staying further proceedings. The learned Single Judge accepted their prayer and passed an omnibus order of stay.

8) During the pendency of the proceedings under the 1976 Act, Farhad Gew Irani (petitioner No.1 in Writ Petition No.9950 of 2005) submitted an application in March, 2002 to the Special Officer for grant of a certificate for the purpose of obtaining building construction permission from Municipal Corporation, Warangal (for short, 'the Corporation'). The Special Officer did not issue the desired certificate. Instead, he asked the applicant to produce 8(4) order before the Corporation. However, the applicant managed the Office Superintendent in the office of the Special Officer, who issued Memo No.A3/1139/76 dated

22-3-2002 in the name of the Special Officer and on the basis of that Memo, Farhad Gew Irani through Sai Lok Associates succeeded in obtaining provisional permission for construction of commercial complex in the residential premises bearing Nos.1/164 to 1/174, 1/174/1, 1/174/2, 1/174/3 (old) corresponding to new Nos.

1-3-172 to 1-3-185 situated at Main Road, Kazipet Town, Warangal, which, as per the approved Master Plan of Warangal, falls within the residential zone.

9) In the year 2002, Shri K. Devanand, the then Commissioner of the Corporation is said to have sent a consolidated proposal to the State Government for change of land use in the Master Plan of Warangal from residential to commercial. Simultaneously, he passed order dated 30-12-2002 for grant of provisional permission for construction of commercial complexes in the areas earmarked as residential zones in the Master Plan.

10) In furtherance of the provisional permission given to them by Shri K. Devanand, Farhad Gew Irani, his brothers and Sai Lok Associates deposited Rs.3,15,400/- as charges for conversion of the land use from residential to commercial and constructed commercial complex. After sometime, they applied for grant of permission to construct third and fourth floors. By this time, a new Commissioner appears to have taken over the reigns of the Corporation and, therefore, their application was rejected vide proceedings in RoC.No.G1/1119/2003 dated 9-9-2003 on the ground that the commercial complex falls in the residential zone of the Master Plan and without change of land use, commercial complex could not have been constructed.

11) Faced with this reversal, Farhad Gew Irani and others filed a suit for injunction in the Court of II Additional Junior Civil Judge, Warangal against the Corporation and KUDA by alleging that their officers were interfering with the construction activity. The same was registered as

O.S.No.1636 of 2004. They also filed I.A.No.2709 of 2004 under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure for grant of temporary injunction. Initially, the trial court granted an ex parte order of status quo, but, after hearing the parties, the learned Presiding Officer vacated the injunction order. However, C.M.A.No.12 of 2005 filed by petitioners No.1 to 3 was allowed by II Additional District Judge, Warangal vide his order dated 29-3-2005 and by taking advantage of the Court order, they raised further construction.

12) In the meanwhile, Farhad Gew Irani and his brothers filed another application for change of land use, which was rejected by Vice-Chairman, KUDA on the ground that the commercial complex had been constructed without prior approval of the government and in violation of Section 12 of the Andhra Pradesh Urban Area (Development) Act, 1975 (for short, 'the 1975 Act').

Writ Petition No.9950 of 2005 – Farhad Gew Irani and others v. Government of Andhra Pradesh rep. by its Secretary, Municipaltiy and Urban Development Department and others.

In Writ Petition No.9950 of 1995, petitioners – Farhad Gew Irani, Shapur Gew Irani, Rustom Gew Irani and Sai Lok Associates represented by its partner P. Keshav Reddy have prayed for quashing communication dated 30-3-2005, vide which Vice-Chairman of KUDA rejected the application made for change of land use from residential to commercial in respect of

H.Nos.1-3-172 to 1-3-185 belonging to Shapur Gew Irani and others and simultaneously made a request to the Commissioner of Warangal Municipal Corporation, Warangal (for short, 'the Commissioner') to take action in the matter of unauthorised construction raised by the petitioners.

Grounds of challenge:

The petitioners have questioned the legality of the decision of the Vice-Chairman of KUDA mainly on the ground of discrimination by asserting that while their application has been rejected, KUDA has recommended to the State Government for change of land use in respect of properties bearing H.No.1-08-612, Nakkalagutta, Hanamkonda, Ward No.1, Block – 7 situated at Balasamudram; H.No.13-3-46, 13-3-58, Metwada; H.No.5-10-107, Kishanpura and Sy.No.1003 situated in Hunter Road, Hanamkonda and the latter accorded permission for the same by issuing G.O.Ms.No.536, MA, dated 20-12-2002, G.O.Ms.No.556, dated 31-2-2004 and G.O.Ms.Nos.291 to 293 dated 4-4-2005 in favour of the owners. They have further pleaded that the rejection of application after lapse of three years is clearly indicative of total arbitrariness on the part of Vice-Chairman, KUDA. Still further, they have pleaded that the land abutting main road from Warangal to Hyderabad via Kazipet is being used for commercial purposes and, therefore, there cannot be any justification for refusing change of land use.

Writ Petition No.14659 of 2005

Boddu Rajaiah and another v. Municipal Corporation, Warangal through its Commissioner in Office, Warangal and others.

In this petition, the petitioners have prayed for issue of a mandamus to respondent Nos.1 to 4 to demolish the illegal constructions made by Farhad Gew Irani and his two brothers. Petitioner No.1 – Boddu Rajaiah is an ex-Municipal Councillor of Warangal and claims to be a social worker, who has been espousing the cause of public and has been approaching the government officers for solving the problems of the public relating to water and electricity supply, maintenance of roads, public lands etc. Petitioner No.2 is the President of Kazipet Ambedkar Yuvajana Sangham. He is a Railway employee and is also engaged in social work. In the affidavit filed by petitioner No.2, Gadepaka Narsaiah alias Narsimha, it has been averred that even though land measuring 58154 square meters belonging to late Gew Shapurji Irani, father of respondent Nos.5 to 7 was

declared surplus under the 1976 Act many years ago and the same is subject matter of Writ Petition No.9761 of 1995, which is pending before this Court, respondent No.5 colluded with Superintendent of Urban Land Ceiling Department and obtained Memo No.A/1139/76, dated 22-3-2002 and then obtained the provisional permission through M/s.Sai Lok Associates from the Corporation. He has further averred that on a complaint made by Sri Baswaraj Saraiah, Member of Legislative Assembly, Warangal Constituency and Sri Ravula Sadanandam, former President of City Congress Committee, Warangal, Director General, Anti Corruption Bureau got an enquiry conducted into the entire gamut of the construction permission obtained by respondent No.5 and his associate builder, but no action has been taken by the official respondents to stop the illegal construction of the building. According to the deponent, respondent Nos.5 to 7 have not only acted in violation of the Master Plan and constructed a commercial complex in the residential area, but they have also violated the sanctioned plan by not leaving the setbacks towards the main road and constructed shops in the front.

In the counter affidavit filed by respondent No.7 – Rustum Gew Irani on behalf of respondent Nos.5 to 7, the deponent has questioned the locus of the petitioners by asserting that they do not have the right to challenge the construction permission granted by the Municipal Corporation. Respondent No.7 has alleged that the writ petition has been filed at the instance of one Ravula Sadanandam son of Sri Ramanarayana, who is a tenant in one of the mulgies where he is running a shop under the name and style of Sri Rama Cycle Stores and is also the ex-President of City Congress Committee, Warangal. He filed R.C.C.No.2 of 1999 before Rent Controller-cum-Principal Junior Civil Judge, Warangal against respondent Nos.5 to 7. Respondent No.5 also filed R.C.C.No.16 of 1999 seeking eviction of the tenant. Both the cases were disposed of by the Rent Controller on 6-3-2003 and the tenant was directed to vacate the

premises. The appeals preferred against the order of the Rent Controller were disposed of by Rent Control Appellate Tribunal-cum-Principal Senior Civil Judge, Warangal on 29-3-2004, whereby the order of the trial court was vacated. The appellate order has been challenged by respondent Nos.5 to 7 in C.R.P. No.3240 of 2004, which is pending adjudication before the High Court. On merits, the deponent has averred that respondent Nos.5 to 7 are absolute owners of house bearing Nos.1/164 to 1/174, 1/174/1 to 1/174/3 (old) corresponding to new Nos.1-3-172 to 1-3-185 situated at Main Road, Kazipet, Warangal. According to respondent No.7, late Gew Shapurji Irani was the owner of the land comprised in Survey Nos.64, 70, 71, 72 and 73 of Kadipikonda Village in Warangal District. His heirs filed a declaration under Section 6(1) of the 1976 Act. The order passed by the Special Officer declaring a part of the land as surplus, has become subject matter of various litigations. In the year 2002, an application was made under the 1975 Act for change of land use. The Commissioner of the Corporation sent a consolidated proposal for change of land use to the government. The Corporation also passed a resolution on 31-8-2002 for grant of provisional permission for construction of commercial complexes in the areas earmarked as residential zone and thereafter, provisional permission was granted vide proceedings in Roc.No.G1/10870/ 2002, dated 30-12-2002. The deponent has further averred that a sum of Rs.12,22,285/- was deposited towards construction fee and a sum of Rs.3,15,400/- was paid for conversion of land use. Respondent No.5 has denied the allegation that the disputed construction is violative of the Master Plan or the sanctioned plan. He has then averred that when the officers of the Corporation tried to interfere with the construction activity, O.S.No.1636 of 2004 was filed on the file of II Additional Junior Civil Judge, Wanragal along with an application for injunction. Initially, the trial court granted injunction, but after hearing the parties, the application was dismissed. Against that, respondent Nos.5 to 7 filed C.M.A.No.12 of 2005 in the Court of II Additional District Judge,

Warangal, which was allowed on 29-3-2005. In the meanwhile, Vice-Chairman, Kakatiya Urban Development Authority, vide proceedings dated 30-3-2005 rejected the change of land use proposal, against which Writ Petition No.9950 of 2005 has been filed.

Apart from filing counter-affidavit, respondent Nos. 5 to 7 have placed on record various documents including Memo dated 22-3-2002 issued in the name of Special Officer, copy of the order in RoC.No.G1/10870/ 2002 dated 30-12-2002 passed by the then Commissioner of the Corporation whereby he granted provisional permissions for construction of commercial complexes etc. in the areas abutting 18 roads despite the fact that the areas are earmarked for residential purposes and copy of letter dated

30-3-2005 issued by the Vice-Chairman of KUDA. The relevant extracts of Memo dated 22-3-2002, order dated 30-12-2002 and communication dated 30-3-2005 are reproduced below:

"**Memo dated 22-3-2002**

Office of the Special Officer
and Competent Authority,
Urban Land Ceiling, Warangal.

Rc.No.A3/A3/1139/76 Dated: 22-3-2002

Memo

The under-named applicant has applied for issue of a certificate showing the total area of 8327 sq. meters of land deleted from computation under the Urban Land Ceiling Act towards the plinth area of dwelling houses, Mulgies, appurtenant land and additional appurtenant land around the said buildings in file No.A3/1139/76 in S.8 (4) orders dated 16-1-1995 for the buildings bearing Mpl. Nos.1/164 to 1/174 (old) etc. for applying construction permission with Municipal Corporation.

The applicant is hereby informed that S.8 (4) orders Dt.16-1-1995 passed by this office in the above file clearly show the exemption of 8327 sq. meters of land under the U.L.C. Act towards the dwelling houses and appurtenant land etc. for the above said Municipal numbers. The applicant is hereby directed to file copy of

relevant extract of S.8 (4) orders Dt.16-1-1995 for obtaining Municipal permission for construction from the Municipal Corporation, Warangal.

(by order)

for Special Officer & Competent Authority, Urban Land Ceiling, Warangal

To
Sri Farhad Gew Irani,
Main Road, Kazipet."

Order dated 30-12-2002 passed by the then Commissioner of the Corporation:

"The Warangal city has been developing day by day fastly, particularly the areas abutting to all the 60' and above wide roads are developing commercially, though the most of the areas are earmarked for residential use zones as per Master Plan. Thus, consolidated change of land use proposals have already been forwarded to the Government in the year 1999 for changing the land use from residential use to commercial use in respect of the areas abutting to all 60' and above wide Master Plan and R.D. Plan Roads, but the proposals are pending with the Government. Obviously, a decision has been taken to grant the provisional permissions for construction of buildings for commercial purpose in residential areas duly collecting the change of land use charges and accordingly provisional permissions are being granted to those applicants who are coming forward seeking provisional permissions and the Council has also ratified the action taken by the Commissioner in the reference cited. But, still some persons are obtaining permissions for residential purpose and constructing the buildings for commercial in deviation to the sanctioned plans, which is resulting in loss of revenue to the Corporation in the shape of less Planning Fee, Betterment charges and other charges.

Therefore, it is decided to grant the provisional permissions to the applicants in the areas abutting to the following roads and all other 60' and above wide roads only for commercial purpose though the areas are earmarked for residential purpose duly collecting the change of land use charges and conversion fee etc. and also planning fee and betterment charges for commercial purpose, pending receipt of the orders from the Govt. an final & regular permissions will be granted after receipt of the change of

land use orders from the Government.

Therefore, orders are hereby issued to the Dy.City Planner, to entertain the Building Applications as mentioned above."

Letter dated 30-3-2005 of the Vice-Chairman, KUDA

"OFFICE OF THE KAKATIYA URBAN DEVELOPMENT AUTHORITY: WARANGAL:

From
The Vice-Chairman,
KUDA, Warangal.

To
The Commissioner,
Warangal Municipal Corporation,
Warangal.

Roc.No.C1/564/02/349, dated 30-3-2005

Sir,

Sub:- KUDA, Warangal – Change of land use from residential use to commercial use in H.No.1-3-172 to 1-3-185 belongs to Shri Shawpur Gew and others.

Ref:- The Commissioner, W.M.C. Lr.No.G1/4534/02, dt.25-4-2002.

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I invite kind attention to the referenced cited. It is to inform that this authority's technical officials have inspected the site and observed that the applicants have already constructed Cellar + Ground + 2 floors commercial complex building and occupied the shops and commercial activities are being taken up without prior approval of the Government as against the violation of U/S.12 of A.P.U.A. (D) Act, 1975.

No ownership documents, link titles and ULC have been submitted for confirmation.

Further the applicant has filed a suit against the KUDA in O.S.No.1636/04 in I.A.No.2709/2004.

In view of the above facts, the change of land use proposals are rejected and request the Commissioner to take action on the unauthorised construction as per rules in force.

Yours faithfully,

Sd/- Vice-Chairman.

Copy to Sri Shapur Gew and others,
H.No.1-3-172 to 1-3-185, Main Road,
Kazipet."

The extracts of report submitted by Joint Collector, Warangal to District Collector, Warangal, which appears to have been forwarded to Director General, Anti-Corruption Bureau in furtherance of his letter dated 19-1-2005 highlighting the irregularities committed by different functionaries are also reproduced below:

"**IRREGULARITY 1:** As per G.O.Ms.No.423, M.A.,
Dt. 31-7-97 and municipal buildings byelaws, 1981, one should submit a valid ownership document. In this case, the applicant has submitted Xerox copies of the house tax paid receipts and notary document made between the developer (applicant) and the owner, which is an invalid document. Basing on this, the building permission was given.

IRREGULARITY 2: The proposed building is for commercial purpose and the land use as per Master Plan in this particular site is residential. Basing on this, the application should have been refused. But in this case, the provisional permission was granted, against the rules of Section 11 and 12 of the APUAD Act, 1975.

IRREGULARITY 3: In this case, the applicant has obtained the building permission duly misleading the corporation suppressing the fact of a suit pending in the court regarding scheduled property, which was shown as proposed to be demolished. Thereafter, an objection petition was also filed by Ravula Sadanandam stating that there is a suit pending between the owner and him regarding the Rent Control Act as he is one of the tenants of the existing shops which were shown as "to be removed" in the proposed constructions.

IRREGULARITY 4: U.L.C. clearance is not produced.

Now the builder is constructing the building in the plot as shown in the municipal plans, as he is permitted to complete the construction within three years from the date of issuing the building permission. The officials of the corporation approached and stopped the construction as he failed to obtain the change of land use from the Government even after lapse of 2½ years. Further, the

provisional permission, which was given earlier, was not valid. Aggrieved with this, he has approached the Court and obtained status quo order in I.A.No.2709/2004 in O.S.No.1636/2004. But, disobeying the Court orders, the owner builder is continuing the construction during the holidays. After noticing the same, the construction made after issuing the status quo order was removed departmentally recently.

In conclusion, the gist of the complaint is that:

A. Memo A3/1139/76, dt: 22.3.2002 from S.O. U.L.C., Warangal Office was unauthorised and illegal is **held proved**.

B. Building permission ("Provisional") was issued by W.M.C. vide Permission No.27/2002 Date: 19-4-2002 which suffers from the following fundamental defects.

i) There is no provision in the Act for issue of provisional building permission.

ii) Change of land use was not obtained prior to issue of permission from Competent Authority i.e. the Government.

iii) Permission was issued without submission of valid ownership document (which is preliminary requirement to consider a building permit).

iv) Valid U.L.C. clearance was not produced.

v) The Applicant has suppressed the fact that the site in question is part of the land for which ULC case is pending in the Court and no finality is arrived regarding any issue related to this land.

vi) The applicant has also suppressed the fact that another court case is pending relating rent control dispute and the disputed portion was shown as "To be removed".

vii) Cellar, Ground + 2 floors covering 15,356.54 SFT was permitted vide "Provisional building permit" whereas Ground + two floor slabs laid, brick work under progress in Block No.1, 2, 3. Columns raised, cellar slab not raised in Block No.5 & 6 and ground floor slab, 1st floor slab demolished in Block No.4 as on today, as per the report of the City Planner, Warangal Municipal Corporation."

Before proceeding further, we consider it necessary to mention that

in furtherance of the direction given by the Court, Smt.Neetu Prasad, Commissioner of the Corporation appeared in person on 1-3-2006 and made a statement that the area where commercial complex has been constructed by Farhad Gew Irani and his brothers through Sai Lok Associates is earmarked for residential purposes in the Master Plan and Zoning Plan. She also gave out that her predecessor had, without any authority, permitted construction of commercial buildings in the residential zone. On the next date of hearing, learned Government Pleader for Municipal Administration produced Xerox copy of Memo No.1246/SC.D/ A3/2002-4, dated 14-3-2006 and G.O.Rt.No.1446, General Administration (SC.D) Department, dated 14-3-2006 whereby the State Government initiated disciplinary proceedings against Shri K. Devanand, former Commissioner of Warangal Municipal Corporation under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 on the charges of having failed to take action on unatuhorised constructions/deviations to the approved plan and having sanctioned permission to the building applications in violation of the provisions contained in the 1975 Act and in violation of the Master Plan and zonal plan and also on the charge that he failed to conduct periodical check of the works under progress in respect of major constructions. The statement of imputation of misconduct served on Shri K. Devanand makes a reference to the permission granted to Farhad Gew Irani.

Shri D. Prakash Reddy, learned Senior Counsel appearing for the petitioners of Writ Petition No.9950 of 2005 and private respondents in Writ Petition No.14659 of 2005 assailed the decision of Vice-Chairman, KUDA declining to recommend change of land use mainly on the ground of discrimination and arbitrary exercise of power. He emphasised that the application made by his clients was kept pending for a period of three years and was arbitrarily rejected after they had constructed building for commercial use by making huge investment. Learned counsel pointed out

that a large number of commercial complexes have been constructed all along Warangal – Hyderabad road via. Kazipet on the basis of the provisional permission granted by the Commissioner of the Corporation and, therefore, even if there has been a violation of the Master Plan and zonal plan, the Court may direct the respondents to regularise the same moreso because, in other cases, permission for change of land use has already been granted by the State Government. In support of his assertion that the land in the area is being used for commercial purposes,

Shri Reddy invited our attention to the list of 127 shops and the photographs annexed with the counter-affidavit filed in Writ Petition No.14659 of 2005. Another argument of the learned counsel is that when there has been a mass violation of the Master Plan, the government should suo motu sanction change of land use, else, a large number of people would be deprived of their livelihood. Shri Prakash Reddy also questioned the locus standi of the petitioners of Writ Petition No.14659 of 2005 by arguing that in the guise of public interest litigation, they are espousing the cause of one of the tenants of the premises belonging to his clients. He also pointed out that in pursuance of the permission accorded by the then Commissioner of the Corporation vide order dated

30-12-2002, many commercial complexes have come up on eighteen identified roads, but the petitioners have deliberately targeted the commercial complex constructed by his clients. Learned counsel then submitted that the report of Joint Collector, Warangal highlighting the irregularities committed in the construction of commercial complex by Farhad Gew Irani and his brothers along with Sai Lok Associates cannot be made basis for passing an adverse order against them because the officer concerned did not give them opportunity to represent their cause.

Shri Bankatlal Mandhani argued that the constructions made by respondent Nos.5 to 7 are liable to be demolished because the same is an end product of the manipulation made by them in connivance with the then Commissioner of the Corporation and some employees of the office of the

Special Officer. Learned counsel emphasised that the provisional permission was obtained by respondent Nos.5 to 7 by suppressing the fact that the proceedings held under the 1976 Act are subject matter of Writ Petition No.9761 of 1995, which is pending in this Court and Memo dated 22-3-2002 issued in the name of the Special Officer was a fabricated document and argued that such document could not be made basis for granting any permission to respondent Nos.5 to 7 or their associate for constructing the building and that too in flagrant violation of Section 15 of the 1975 Act. Shri Mandhani pointed out that as per the existing Master Plan of Warangal, the area in which the land is situated is earmarked for residential purposes and argued that without getting the Master Plan modified by following the procedure prescribed under Section 12 of the 1975 Act, respondent Nos.5 to 7 could not have obtained provisional permission for construction of commercial complex. He submitted that the provisional permission accorded to respondent Nos.5 to 7 to raise commercial complex in the residential area is a clear case of fraud on the statute and, therefore, the Court may restrain the government from regularising such construction. Learned counsel lamented that by abusing and misusing the power vested in him under the Andhra Pradesh Municipal Corporations Act, 1994 read with the Hyderabad Municipal Corporation Act, 1955, the then Commissioner of the Corporation has totally destroyed the concept of planned development and argued that the Court should redeem the situation by ordering demolition of the disputed construction.

We have thoughtfully considered the respective submissions. Since the proceedings relating to urban land ceiling case are subject matter of Writ Petition No.9761 of 1995, we do not consider it proper to make any comment or express any opinion on the right of Farhad Gew Irani and his brothers over the land in question and would confine our order to the determination of the legality of the provisional permission granted to them by the then Commissioner of the Corporation to construct commercial

complex in the residential area and the decision of the Vice-Chairman of KUDA not to recommend their case for change of land use and also whether the official respondents should be directed to demolish the building constructed in violation of the prohibition contained in Section 15 of the 1975 Act.

There is no dispute between the parties that the house property claimed by Farhad Gew Irani and his brothers is situated in the area, which is earmarked for residential purposes in the Master Plan and Zonal Development Plan of Warangal. The statutory character of the Master Plan and Zonal Development Plan is evinced from the provisions of Sections 6 to 11 of the 1975 Act, which contain detailed procedure to be followed for preparing such plans. Section 15 of the Act, which prohibits the use of the land and buildings in contravention of plans prepared under Sections 6 to 10, and the plans prepared prior to the enforcement of the 1975 Act, which have acquired a statutory character by virtue of Section 11 of the said Act, read as under:

"**15. Use of the land and buildings in contravention of plans:**

> After the coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:
>
> Provided that it shall be lawful to continue to use upon such terms and conditions as may be determined by regulations made in this behalf, any land or building for the purpose for which, and to the extent to which, it is being used on the date on which such plan comes into force."

A reading of the above reproduced provision makes it clear that the prohibition contained against the use of land for a purpose other than the one specified in the plan is absolute. Therefore, there is no escape from the conclusion that the provisional permission granted by the Commissioner of the Corporation vide his order dated 30-12-2002, which enabled Farhad Gew Irani and others to raise commercial complex in the residential area was nullity and the construction raised by Farhad Gew

Irani and his brothers in collaboration with Sai Lok Associates is illegal. The machination made by the petitioners of Writ Petition No.9950 of 2005 for securing provisional permission is clearly established by the fact that even though the Special Officer declined to grant certificate to them, they persuaded the Office Superintendent to issue fake certificate on behalf of the Special Officer. A reading of order dated 30-12-2002 passed by the then Commissioner of the Corporation shows that while granting provisional permission, the concerned officer was very much conscious of the fact that the areas are earmarked for residential purposes and, without change of the land use, the same cannot be used for commercial purposes. This is the reason why he gave the permission for construction subject to the sanction of change of land use by the government. It is impossible for any person of reasonable prudence to believe that a senior officer of the rank of the Commissioner was not aware of the consequences of making an order in flagrant breach of the statutory provision. Rather, we are of the considered view that the officer concerned had deliberately granted permission to the applicants and others to indulge in violation of the mandate of law knowing fully well that once the commercial complexes are constructed, the matter would become fate comply and the law breakers will be able to manipulate the executive apparatus of the State to sanction change of land use.

It needs no emphasis that planned development of a city is absolutely imperative for the residents. The illegal and unauthorised constructions made in violation of the Master Plan and the Zonal Development Plan creates enormous problems for the administration and the public at large due to traffic congestion and non-availability of amenities like water, electricity etc. In most of the cities of the country including the cities like Hyderabad, Vijayawada and Warangal, life of the people is becoming miserable on account of mushroom growth of illegal and unauthorised constructions and rampant violation of the Master Plans

and Zonal Development Plans. It is, therefore, high-time for the political and executive apparatus of the State including the officers who are entrusted with the task of ensuring planned development of the cities in conformity with the Master Plan and Zonal Development Plans to rigorously enforce the prohibition contained against the misuse of land and ensure that no illegal construction is allowed to come up. The State machinery must refrain from regularizing illegal and unauthorised constructions. Else, the situation may become chaotic.

At this stage, we may notice some judicial pronouncements which have bearing on the cases in hand. In **K. Ramdas Shenoy v. Chief Officers, Town Municipal Council, Udipi**[1], the Supreme Court considered whether the Town Planning Scheme framed under Madras Town Planning Act, 1920 could be violated by the Municipal Council and permission granted for construction of a cinema building in a residential area. While dealing with the objection raised by the builder to the locus standi of the petitioner on the premise that the mere grant of licence to construct a cinema building will not cause any injury to the resident and he cannot seek intervention of the Court till the building is actually used as cinema hall, the Supreme Court observed:

> "The appellant can challenge at the threshold when the Scheme which is framed for the benefit of the residents in that area is violated by the Municipality. The Municipality acts for the public benefit in enforcing the Scheme. Where the Municipality acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess. The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If

sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative.
(Underlining is ours)"

The Supreme Court then considered whether the illegal construction of a cinema building materially affects the right to enjoyment of the property by persons residing in their area and held:

"An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The Scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the Scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the courts will quash orders passed by Municipalities in such cases."

The Supreme Court also rejected the plea of the respondent that the building construction in violation of the Town Planning Scheme should not be disturbed because the petitioner has spent huge money over it and held:

"The High Court was not correct in holding that though the impeached resolution sanctioning plan for conversion of building into a cinema was in violation of the Town Planning Scheme yet it could not be disturbed because Respondent 3 is likely to have spent money. An excess of statutory power cannot be validated by acquiescence in or by the operation of an estoppel. The Court declines to interfere for the assistance of persons who seek its aid to relieve them against express statutory provision. Lord Selborne in **Maddison v. Alderson {(1883) 8 AC 467}** said that courts of equity would not permit the statute to be made an instrument of fraud. The

impeached resolution of the Municipality has no legal foundation. The High Court was wrong in not quashing the resolution on the surmise that money might have been spent. Illegality is incurable."

In **Dr. G.N. Khajuria v. Delhi Development Authority**[2], the Supreme Court held that allotment of land reserved for park in a residential colony for nursery school amounted to misuse of power and was liable to be quashed. Their Lordships further held that the mere fact that some construction had already been raised by the allottee was not relevant for determining the legality of the allotment.

In **M.I. Builders Pvt. Ltd. V. Radhey Shyam Sahu**[3], the Supreme Court considered the question whether the construction of underground shopping complex in a park is legally permissible. While declaring that the construction was illegal and upholding the direction of the High Court for demolition thereof, their Lordships of the Supreme Court laid down the following propositions:

1) By allowing underground construction the Mahapalika has deprived itself of its obligatory duties to maintain as is required under Section 114 of the U.P. Municipal Corporation Act, 1959. But then one of the obligatory functions of the Mahapalika under Section 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing an underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done.
2) The Mahapalika is the trustee for the proper management of the park. When the true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by the Supreme Court in **Span Resort case {M.C. Mehta v. Kamal Nath (Span Resort case) – (1997) 1 SCC 388}**. Public trust doctrine is part of Indian law. This public trust doctrine in our country has grown from Article 21 of the Constitution.
3) Action of the Mahapalika in agreeing to the construction of an underground shopping complex in contravention of the provisions of the Act and then entering into an agreement with the builder

against settled norms was wholly illegal and has been held to be so by the High Court. No doubt the Mahapalika is a continuing body and it will be estopped from changing its stand in the given case. But when the Mahapalika finds that its action was contrary to the provisions of law by which it was constituted there could certainly be no impediment in its way to change its stand. There cannot be any estoppel operating against the Mahapalika.

4) No consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."

Rejecting the plea of the builder that it had made huge investment for construction of underground shopping complex, the Supreme Court observed:

> "In this case the builder got an interim order from this Court and on the strength of that order got sanction of the plan from the Mahapalika and no objection from LDA. It has no doubt invested considerable amount on the construction which is 80% complete and by any standard is a first class construction. Why should the builder take such a risk when the interim order was specific that the builder will make construction at its own risk and will not claim any equity if the decision in the appeal goes against it? The builder is not an innocent player in this murky deal when it was able to get the resolutions of the Mahapalika in its favour and the impugned agreement executed. Now, construction of shops will bring in more congestion and with that the area will get more polluted. Any

commercial activity now in this unauthorised construction will put additional burden on the locality. The primary concern of the Court is to eliminate the negative impact the underground shopping complex will have on the environmental conditions in the area and the congestion that will aggravate on account of increased traffic and people visiting the complex. There is no alternative to this except to dismantle the whole structure and restore the park to its original condition leaving a portion constructed for parking as required under clause (ix-a) of Section 114 of the U.P. Municipal Corporation Act, 1959."

In **Friends Colony Development Committee v. State of Orissa**[4], the Supreme Court emphasised the need of planned development of the cities in the following words:

"In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified."

The Supreme Court then took cognizance of the large number of illegal constructions made in the city of Cuttack in violation of the Master Plan and sanctioned plan and held:

> "Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffers unbearable burden and is often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorised constructions, but who failed in doing so either by negligence or by connivance."

In **Mahendra Baburao Mahadik v. Subhash Krishna Kanitkar**[5], a two Judges Bench of the Supreme Court referred to the judgments in **M.I. Builders (P) Ltd. v. Radhey Shyam Sahu** (supra) and **Friends Colony**

Development Committee v. State of Orissa (supra) and approved the order of the High Court whereby direction was given to Bhiwandi Nizampura Municipal Council for demolition of illegal construction made by the appellants.

In **Rajender Singh v. State of Haryana**[6], the Supreme Court interpreted the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and approved the action taken by the concerned authorities for demolition of illegal constructions. In the course of judgment, the Supreme Court observed as under:

> "The Act seeks to achieve the object of leaving clear areas adjacent to scheduled roads intended for swift and safe moving of vehicular traffic. Any attempt to defeat that object by putting constructions of *dhabas*, residential or industrial buildings against the terms of the Development Act, would tend to affect public safety and endanger lives and property and courts must discourage such attempts. Lethargy or studied indifference of officials to act promptly cannot be made use of to thwart public interest. It is, therefore, not just or proper for courts to entertain pleas of technical nature which would tend to defeat the object of the Act. The Tribunal and the High Court were fully justified in not interfering with the action initiated by the authorities concerned for removal of unauthorised constructions in violation of Section 3(1).
>
> Same is the position regarding constructions in controlled areas. The purpose of declaring an area, a controlled area, cannot be allowed to be defeated by recourse to technical pleas, especially by those who have violated the terms of the statute. Viewed from the angle of public interest, when there is notification of the declaration in the gazette in terms of Section 4(1) of the Act, the same must be given effect to and any user of land for purposes other than the original purpose for which it was used, should be discouraged. The said objects should not be lost sight of by courts which are concerned with public interest, which ultimately has to prevail over private interest."

In **M.C. Mehta v. Union of India**[7], the Supreme Court emphasized the need of strict adherence to the Master Plan prepared by the experts after taking into account various aspects like healthy living, environment, lung space need, land use intensity, areas where the residential houses are to be built and where the commercial buildings are to be located, need of household industries, etc. and held that residential houses cannot be converted into commercial shops and residential properties cannot be used for commercial and trading activities.

In **S.N. Chandrasekhar v. State of Karnataka**[8], the Supreme Court interpreted the provisions of Karnataka Town and Country Planning Act, 1961 and held that the plot earmarked for residential purpose cannot be converted into commercial by allowing the allottee to start a restaurant.

In **K.K. Bhalla v. State of M.P.**[9], the Supreme Court ruled that where the land was reserved within the scheme for public and semi-public purposes, the same cannot be allotted for establishing an industry. In that case, the objection raised by the respondents to the bona fides of the petitioner by contending that he had not challenged other similar allotments was rejected by the Supreme Court by observing that this would not entitle the allottees to invoke Article 14 to sustain the impugned allotment.

The ratio of the above noted judgments fortifies our conclusion that the provisional permission granted by the then Commissioner of the Corporation to Farhad Gew Irani and brothers and Sai Lok Associates to construct commercial building in the residential zone was nullity and was vitiated by fraud and manipulations and, therefore, the construction raised by them is liable to be declared illegal.

The argument of Shri Prakash Reddy that the decision of the Vice-Chairman not to entertain the prayer of the petitioners for change of land use is arbitrary is wholly meritless. A reading of communication dated 30-

3-2005 shows that while declining to recommend the change of land use, the Vice-Chairman had taken note of the fact that the applicants had already raised commercial complex in clear violation of Section 12 of the 1975 Act. As a matter of fact, at the time of submission of the application, Farhad Gew Irani and his associate were very much conscious of the fact that the area was earmarked for residential use only and yet they manipulated the grant of provisional permission for construction of commercial complex, that too during the pendency of the matter relating to ULC proceedings before the High Court. Thus, mere delay in the disposal of the application made by them cannot lead to an inference that the Vice-Chairman of KUDA had acted arbitrarily or the decision taken by him is vitiated by mala fides.

Notwithstanding the above conclusions and keeping in view the fact that proceedings-cum-order dated 30-12-2002 passed by the then Commissioner of the Corporation has resulted in wanton violation of the Master Plan and Zonal Development Plan, we feel that it is imperative for the government to take a comprehensive decision in the matter of removal of illegal unauthorised structures and constructions and also for enforcement of the Master Plan and Zonal Development Plan. This would go a long way to save the future of the cities. We have no doubt that the executive apparatus of the State will ensure scrupulous compliance of the Master Plans and Zonal Development Plans not only of the city of Warangal, but also of the other cities of the State so that the law breakers do not get encouragement for destroying the concept of planned development of the urban as well as rural areas.

In the result, Writ Petition No.9950 of 2005 is dismissed. Writ Petition No.14659 of 2005 is disposed of with the following directions:

1) The government is directed to constitute a committee of three senior officers headed by an officer of the rank of Principal Secretary to look into the entire gamut of illegal/unauthorised constructions in the city of Warangal, which have been made on the basis of an apparently

fraudulent provisional permission granted by the then Commissioner. The committee should hear the representatives of those who have made illegal/ unauthorised constructions as also the representatives of the public and then make recommendations to the government for ensuring compliance of the Master Plan and Zonal Development Plan. While doing so, the committee shall take into consideration the report sent by Joint Collector, Warangal to the District Collector in the matter of alleged fabrication of the record by the office of the Special Officer, which facilitated grant of provisional permission to Farhad Gew Irani and his associate. The committee should submit its report within three months. Thereafter, the government shall take appropriate decision in the matter.

2) If the government, keeping in view the importance of the planned development of the city, comes to the conclusion that the permission granted by the then Commissioner vide order dated 30-12-2002 was a fraud on the statute, then direction may be given for restoration of the use of the land as per Master Plan and Zonal Development Plan of the area. The government is expected to take a holistic view of the matter and pass similar orders in cases of other constructions as well albeit after giving notice and hearing of other affected persons. Appropriate decision in this regard must be taken and orders passed within two months from the date of receipt of the report of the committee.

3) Till appropriate decision is taken by the government, interim order dated 6-9-2005 passed by the Court in Writ Petition No.14659 of 2005 shall continue. If the petitioners in Writ Petition No.9950 of 2005 have already completed construction, then they shall not be entitled to use or lease out the premises for commercial use. Commissioner, Warangal Municipal Corporation should personally ensure that this order is faithfully implemented by the officers of the Corporation.

G.S.SINGHVI, C.J.

January 5, 2007

G.BHAVANI PRASAD, J.

Note:

1) L.R. copy be marked.

2) The Court Officer is directed to give attested copies of this order to the learned counsel for the parties.

(By order)

ARS/svs

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[1] (1974) 2 SCC 506

[2] (1995) 5 SCC 762

[3] (1999) 6 SCC 464

[4] (2004) 8 SCC 733

[5] (2005) 4 SCC 99

[6] (2005) 9 SCC 1

[7] (2006) 3 SCC 399

[8] (2006) 3 SCC 208

[9] (2006) 3 SCC 581